WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADARAS

DATED: 19.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(Revision) Nos.31 & 37 of 2002

State of Tamil Nadu represented by the
Commissioner of Agricultural Income-tax,
Chepauk, Chennai-5. ... Petitioner in both cases.

vs.

M/s.Coonoor Tea Estates Co.Ltd.,
Coonoor.
... Respondent in TC31/2002

Tvl.Tea Estates India,
Hindustan Lever Limited,
Valparai.
... Respondent in TC37/2002

Under section 54(1) of the Tamil Nadu Agricultural Income-tax Act, 1955 Tax Case revision, TC.31/2002 filed against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras in ATA No.7/2001 &8/2001 dated 30.11.2001, so far as it relates to assessment year 1996-97 against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Chennai 104 in Agricultural Tribunal Appeal NOs. 7/2001 and 8/2001 dated 30.11.2001 against the order of the District Revenue Officer/Asst. Commissioner (Agricultural Income TAx) Coimbatore in A.P. NO. 86/2000/D. dated 27.12.2000 against the order of the Agricultural Income TAx Officer, Coonoor in PA NO. 603/96-97 dated 30.09.2000. and TC37/2002 filed against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras in ATA.3/2000 dated 17.10.2001. against the order of the Tamil Nadu Agricultural Income Tax Tribunal, Chennai - 104 in ATA 3/2000 dated 17.10.2001 against the order of the District Revenue Officer/Assistant Commissioner of Agricultural Income Tax, Coimbatore in AP NO. 14/2000/D dated 22.03.2000 against the order of the District Revenue Officer/Assistant Commissioner of Agricultural Income TAx,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Coimbatore in A.P. NO. 14/2000-D dated 13.3.2000 against the order of the Agricultural Income Tax Officer, Coonoor in GIR - NO- 2T/92-93/cAR DATED 25.01.2000 RESPECTIVELY.

For petitioner in both : Mr.Haja Nazirudeen, Spl.GP (T)
For respondents in both : Mr.Chandran.

JUDGMENT
(Delivered by P.D.DINAKARAN,J.)

These two revisions are filed against the order of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras in ATA No.7/2001 &8/2001 dated 30.11.2001, so far as it relates to assessment year 1996-97 and ATA.3/2000 dated 17.10.2001, for the assessment year 1992-93.

2.1. The assessees in both the cases are Tea Estate Companies. The Agricultural Income-tax Officer revised the assessment by bringing to tax 60% of deduction which was allowed by the Central Income-tax Officer under section 80-HHC of the Income-tax Act.

2.2. The first appellate authority, namely, the Assistant Commissioner (Agricultural Income-tax), Coimbatore sustained the revision of assessment, which was challenged by the assessees before the Agricultural Income-tax Appellate Tribunal.

2.3. Before the Tribunal, it was contended by the assessees that as per Rule 7 of the Tamil Nadu Agricultural Income-tax Rules, 1955, the computation made by the Income-tax Officer under the Income-tax Act should be accepted by the Agricultural Income-tax Officer and hence, the revision of assessment made by the Agricultural Income-tax Officer was not valid.

2.4. The Tribunal, accepting the contention of the assessees, allowed the appeals filed by them. Hence, the above revisions have been filed.

2.5. While admitting the revision petitions, this Court framed the following questions of law for consideration:

T.C.No.31 of 2002:

> "Whether the order of the Agricultural Income Tax Officer, Coonoor is based on facts and as per the amendment to sub-section 4(b) to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

section 80 HHC of the Income-tax Act, 1961 by the Finance Act, 1999?"

T.C.No.37 of 2002:

"Whether the Tribunal is right in setting aside the assessment made by the Agricultural Income-tax Officer which was sustained by the Assistant Commissioner of Agricultural Income-tax?"

3.1. Mr.Haja Nazirudeen, learned Special Government Pleader (Taxes) contends that Sub-section 4-B of section 80 HHC was inserted by the Finance Act 1999 with retrospective effect from 1st April, 1992 and hence, the revision of assessment made by the Agricultural Income-tax Officer on 60% of deduction is valid even though the same was allowed by the Central Income-tax Officer under section 80 HHC of the Income-tax Act before the Finance Act, 1999 came into force.

3.2. According to the learned Special Government Pleader, the Tribunal failed to take note of sub-section 4-B of section 80 HHC of the Income-tax Act for the purpose of computation of total income as section 80 HHC of the Income-tax Act provides that income not chargeable to tax under the Income-tax Act shall be excluded and that 60% of the income which is liable to be taxed under the Agricultural Income-tax Act should be excluded for the purpose of deduction under section 80-HHC of the Income-tax Act and therefore the revision of assessment of 60% of deduction under section 80-HHC is justified.

4.1. Sustaining the orders of the Tribunal under revision, Mr.Chandran, learned counsel appearing for the respondents/assessees relies upon the proviso to Rule 7 of Tamil Nadu Agricultural Income-tax Rules, 1955 and contended that the computation made by the Indian Income-tax Officer should be accepted by the Agricultural Income-tax Officer.

4.2. According to the learned counsel, the Agricultural Income-tax Officer should not make any addition to the amount of agricultural income so computed by the Central Income-tax Officer and hence, the revision of assessment made by the Agricultural Income-tax Officer bringing 60% of deduction under 80 HHC of the Income-tax Act into tax is not valid in law and the Tribunal was right in setting aside the revision of assessment made by the Agricultural Income-tax Officer as sustained by the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Assistant Commissioner of Agricultural Income-tax.

5. The points to be decided in these revisions are,

(i) whether the Agricultural Income-tax Officer is empowered to revise the assessment by recomputing the income?

(iii) In the light of amendment to section 80 HHC of the Income-tax Act by the Finance Act, 1999 inserting sub-section 4-B with retrospective effect from 1992, whether the Agricultural Income-tax Officer was justified in revising the assessment?

6. In this regard, it is apt to refer to sub-section 4B of section 80 HHC of the Income-tax Act as well as Rule 7 of the Agricultural Income-tax Rules, 1955 which read as follows:

Sub-section 4B of section 80 HHC of the Income-tax Act, 1961:-

> 80HHC. Deduction in respect of profits retained for export business -- (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise:
>
> Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be), issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the total profits of the export business of the assessee the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(1A) to (4A) xxxxx

(4B). For the purposes of computing the total income under sub-section (1) or sub-section(1A), any income not charged to tax under this Act shall be excluded."

Rule 7 of the Agricultural Income-tax Rules, 1955

> 7. Computation of Income from tea – In respect of agricultural income from tea grown and manufactured by the seller in the State of Madras, the portion of the income worked out under the Indian Income-tax Act and left unassessed as being agricultural shall be assessed under the Act after allowing such deductions under the Act and the rules made thereunder:
>
> Provided that the computation made by the Indian Income-tax Officer shall be accepted by the Agricultural Income-tax Officer"

7. In the given case, it is clear that the Central Income-tax Officer computed the total income and allocated 60% of the same for being treated as agricultural income, treating 40% as business income of the assessees concerned and assessment was also made on the agricultural income, viz., 60% of the total income by the Agricultural Income-tax Officer. At the time of computation of income, the Central Income-tax Officer allowed deduction under section 80 HHC of the Income-tax Act as per the law as it stood then.

8. Sub-section 4-B of section 80-HHC of the Income-tax was inserted by the Finance Act, 1999 with retrospective effect from 1st April, 1992, as per which, any income not chargeable under the Income-tax Act shall be excluded. The Agricultural Income-tax Officer, in the light of sub-section 4-B of section 80 HHC of the Income-tax Act, revised the assessment by disallowing 60% of deduction allowed under section 80 HHC of the Income-tax Act, which was sustained by the first appellate authority and set aside by the Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

9. In this connection, it is relevant to refer to the law on this point.

9.1. In UNION OF INDIA v. WARREN TEA LTD. (266 ITR 226), while interpreting sub-section 4(b) of section 80 HHC of the Income-tax Act with reference to special deduction towards export business of tea, held as follows:

> "The Income-tax Act has defined "income" in section 2(24) of the Income-tax Act, 1961, to include (i) profits and gains and such other sums chargeable to tax under clauses (ii) to (iv) of section 28 of the Act. Rule 8 of the Income-tax Rules, 1962, prescribes computation of income derived from the sale of tea grown and manufactured as if it were income derived from business. Rule 8 does not use the expression "total income". It simply uses the expression "income". Therefore, this income is to be construed as "income" defined in section 2(24) of the Act as income from profits and gains. This income is to be computed in the manner laid down in the Act. The expression "total income" defined in section 2(45) means "the total amount of income referred to in section 5, computed in the manner laid down in the Act". The expression "gross total income" has neither been defined nor has been used in section 29 or anywhere in the provisions of sections 30 to 43D of the Act. The expression "gross total income" is used in Chapter VI-A. The expression "gross total income" defined in section 80B(5), refers to the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A. This definition creates a fiction under which the total income computed in the manner laid down in the Act becomes gross total income from which again total income is computed after allowing deductions under the provisions of Chapter VI-A.
>
> The deductions specified in Chapter VI-A are admissible on the income chargeable to tax. It cannot be extended to agricultural income. The total income exposed to Chapter VI-A cannot include the agricultural component included in the composite income by reason of the fiction created by rule 8 in view of section 10(1). Rule 8 is confined only to computation. It does not extend to chargeability. The difference between

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

"total income" and "gross total income" is that this gross total income is chargeable to tax and this chargeability is reduced on account of the deductions available under Chapter VI-A.

The benefit of Chapter VI-A is available to income chargeable to tax. This cannot be extended to income not chargeable under the Act. Section 80HHC allows an assessee engaged in the business of export out of India of any goods or merchandise, a deduction out of the profits derived by the assessee from the export of such goods or merchandise. Therefore, it is not the income, which is the base for assessment of the deduction. It is the profit derived from the export of the goods or merchandise in the course of business of export. Admittedly, growing of tea is not a business but an agricultural process. Manufacturing of tea is business. Sub-section (3) of section 80HHC makes a distinction between profits out of exports of goods or merchandise manufactured or processed and export of trading goods. Different kinds of computation are provided for in sub-section (3) in respect of these two kinds of goods. Thus, there is a sub-division in section 80HHC in relation to goods or merchandise manufactured or processed by the assessee and of trading goods, which are to be computed differently. The expression "goods or merchandise manufactured or processed" cannot include goods or merchandise grown through agricultural process by the assessee. Manufacturing and processing is business while growing is agriculture. Therefore, only that part of the profit derived out of manufacture and process would be eligible to deduction. The profit derived from growing of tea cannot form the component of the nature of the income eligible to deduction under section 80HHC. Even if we accept that part of the income derived from grown tea to be treated as trading goods the cost of purchase of the trading goods is to be reduced. It is only that part of the income which forms a component of the business income that would be eligible to deduction. The cost of growing tea would be a direct cost deductible from the business of export.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

> The nature of profit contemplated under section 80HHC(1) is the profit out of the business and the turnover from the business, which by no stretch of imagination could include the profit derived from agriculture. The apportionment postulated in rule 8 is to be made before deduction under section 80HHC is allowed. In other words, the benefit of deduction under section 80HHC would be available only on the income derived from the profit out of the business of export of tea processed and manufactured and not out of the profit of growing tea which is subject to the Agricultural Income-tax Act outside the scope and purview of the Income-tax Act. Therefore, sub-section (4B) introduced through an amendment under the Finance Act, 1999, is clarificatory in nature."
>
> (Emphasis supplied)

9.2. In ASSAM CO. LTD. v. STATE OF ASSAM (248 ITR 567) the Apex Court, with reference to computation of agricultural income under the Income-tax Act for the purpose of assessment under the provisions of Assam Agricultural Income-tax Act, 1939 and the Rules framed thereunder, held that the agricultural income computed by the Income-tax Officer under the Income-tax Act is binding on the State Officer and any rule permitting the State Officer to recompute is ultra vires. The relevant portion of the judgment reads as follows:-

> "The object and scheme of the Assam Agricultural Income-tax Act, 1939, do not contemplate the State tax authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers, nor do the subjects specified in sub-section (2)(a) to (m) of section 50 provide for making rules empowering the State Officers to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. There is no provision in section 50 which authorises the State Government to make any such rules in the nature of the proviso to rule 5 of the State Rules. The proviso to rule 5 of the Assam Agricultural Income-tax Rules, 1939, to the extent that it empowers the State agricultural income-tax authorities, after examining the books already examined by the Central Officers in given cases, to refuse to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

accept the computation of agricultural income made by the Central Officers and to recompute the agricultural income, is ultra vires the State Act.

It is always open to the State authorities to invoke the jurisdiction of the appellate and revisional authorities under the Central Income-tax Act and if they succeed in any such attempt they can always recompute the agricultural income as contemplated by section 20D. The proviso to section 49 is incorporated in the Assam Act only for this limited purpose.

The power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the rule goes beyond what the Act contemplates, the rule becomes in excess of the power delegated. If the rule-making authority does any of the above, the rule becomes ultra vires the Act.

While interpreting a particular provision of a statute, courts should bear in mind the object and scheme of the entire Act. The particular provision cannot be considered or interpreted in isolation so as to give room for conflict inter se between the provisions of the same Act. Courts should also bear in mind that while interpreting a provision of the Act an interpretation leading to the provision becoming ultra vires should be avoided."

(Emphasis supplied)

9.3. Following the decision of the Apex Court in Assam Co. Ltd. Case (248 ITR 567), the Kerala High Court in a recent decision in TATA TEA LTD. v. IAC OF AGR. I.T. (283 ITR 275), while dealing with the computation of income under the Income-tax Act and Kerala Agricultural Income-tax Act, 1991, held that the computation of income under the Central Act cannot be challenged. The relevant portion of the judgment reads thus:

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

> "The State Legislature can impose tax only in respect of 60 per cent of the income derived by the assessee from tea but such income has to be computed in the manner laid down under the 1922 Act and thereafter under the Income-tax Act, 1961, for the computation of business income. The State Officers have no jurisdiction to vary the computation made by the Central Officers. If there is any necessity of varying the computation made by the Central Officers due to any omission in applying the various provisions of the Income-tax Act, 1961, or any new facts have to be brought to the knowledge of the Central Officers, the State Officers could bring it to the knowledge of the Central Officers. The State Officers cannot tinker with the computation already made by the Central Officers. They cannot recompute agricultural income already computed by the Central Officers. If the authorities functioning under the Agricultural Income-tax Act are of the opinion that the Central Officers have not made proper assessment of the agricultural income as required under the Central Act then it is always open to the State Officers to invoke the jurisdiction of the appellate or revisional authorities under Chapter XX(E) of the Central Act and if they succeed in their attempt they can recompute the agricultural income as contemplated in the State Act. Hence, the computation made by the officers functioning under the Kerala Agricultural Income-tax Act, 1991, in respect of the assessment years 1994-95 and 1995-96 and other related assessment years was bad in law. It was liable to be quashed."
>
> (Emphasis supplied)

10. We are therefore of the considered opinion that as far as computation of income is concerned, the Income-tax Officer has reached its finality which is binding on the Agricultural Income-tax Officer under Rule 7 of the Agricultural Income-tax Rules, 1955 for the purpose of agricultural income-tax.

11. On the facts of the case, the Tribunal found that the income derived from cultivation and sale of tea is a composite income consisting of agricultural income and business income and in view of Rule 7 of the Agricultural Income-tax Rules, 1955, the apportionment of business income and agricultural income at the ratio of 40:60 by

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the Central Income-tax Officer was final and the agricultural income, viz., 60% of total income, is only available to the State authorities for levy of agricultural income-tax and any deduction allowable under the Central Income-tax Act cannot be added back thereby increasing the quantum of income beyond 60%. In our considered opinion, the Tribunal was correct in setting aside the revision of assessment, holding that deduction allowed in respect of 40% of business income cannot be brought to assessment as agricultural income.

12. In this view of the matter, we hold that the Agricultural Income-tax Officer is not empowered to revise the assessment by recomputing the income, in the light of amendment to section 80 HHC of the Income-tax Act by the Finance Act, 1999 with retrospective effect from 1992.

Accordingly, we dismiss both the revisions answering the questions of law referred to above against the State and in favour of the assessee. No costs.
na.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Agricultural Income-tax Officer, Coonoor.
2. The Assistant Commissioner of Agricultural Income-tax, Coimbatore
3. The Commissioner of Agricultural Income-tax, Chennai-5
4. The Registrar, Agricultural Income-tax Appellate Tribunal, Chennai
5. The Tamil Nadu Agricultural Income TAx Tribunal Chennai - 104.

+ one cc to Mr. K.J. Chandran, Advocate sr no. 26203
+ one cc to the Special Government Pleader (T) Sr no. 25614

AMB(CO)
NM(05.07.2006)

T.C.(R) Nos.31 & 37 of 2002

https://hcservices.ecourts.gov.in/hcservices/